

Remarks

Claims 2-10 and 12-27 remain pending.

Claim Rejections under U.S.C. §102

The Examiner rejected claims 12 and 21 as being anticipated by U.S. Patent No. 6,445,918 (Hellander). Applicants respectfully disagree for at least the following reasons.

Applicants respectfully submit that Hellander fails to teach each and every element of independent claims 12 and 21.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Also, "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

For ease of reference, independent claim 12, reads (emphasis added):

A method of automatically maintaining a previously established data connection on a wireless data network, comprising:
determining, at minimum fixed time intervals determined by a service check timer, the status of the previously established data connection;
automatically transmitting a connection request if the previously established data connection is determined to be lost; and
re-establishing the previously established data connection if the transmitted connection request is accepted by the wireless data network.

Further, independent claim 21 reads (emphasis added):

A mobile device for establishing and maintaining a data connection to a wireless data network, the mobile device comprising:

a back off timer for timing a back off period between retries to establish the data connection;

a service check timer for setting a minimum fixed interval after which a previously established data connection is checked to determine if it has been lost; and

a connection manager for determining if the previously established data connection between the mobile device and the wireless network exists or has been lost; for resetting the service check timer upon its expiry if the data connection exists; for transmitting connection requests to the wireless network upon initialization, upon expiry of the back off timer, and upon expiry of the service check timer if the previously established data connection has been lost; and for resetting the back off timer in response to receipt of a connection rejection from the wireless network.

Applicants respectfully submit that Hellander fails to teach at least (a) “determining, at minimum fixed time intervals determined by a service check timer, the status of the previously established data connection” as recited in claim 12 and (b) “a service check timer for setting a minimum fixed interval after which a previously established data connection is checked to determine if it has been lost [...] and upon expiry of the service check timer if the previously established data connection has been lost” as recited in claim 21.

Analysis of the portions of Hellander upon which the Examiner relies shows that the claim elements in question are absent. The examiner cited column 1, lines 11-27, column 4, lines 48-63 and column 2, lines 23-35 as teaching a service check timer upon expiry of which the status of a previously established data connection is checked (see Office Action dated December 8, 2009 at page 2).

Column 1, lines 11-27 of Hellander describes how failures or interruptions in the radio path between the base station and the mobile subscriber can frequently result in dropped calls.

There is no mention of a service check timer in this passage, let alone “determining, at minimum fixed time intervals determined by a service check timer, the status of the previously established data connection” as recited in claim 12 or “a service check timer for setting a minimum fixed interval after which a previously established data connection is checked to determine if it has been lost” as recited in claim 21.

Column 2, lines 23-35 of Hellander describes a method and system for reconnecting dropped calls in a mobile telecommunications device. Again, there is no teaching or suggestion of a service check timer as recited in claims 12 and 21.

Column 4, lines 48-63 of Hellander discloses that a radio path failure can cause a call drop and describes an embodiment for reconnecting the dropped call. As with the earlier cited passages, there is no teaching or even mention of a service check timer as recited in claims 12 and 21.

The Examiner has specifically cited “short period of time” in support of his assertion that the service check timer is taught by Hellander. Applicant respectfully submit that this is incorrect.

Hellander, at column 4, lines 53-57, states “such a call drop does not typically cause the ongoing call to be immediately terminated; instead, the call connection is maintained at least between the servicing MSC 20 and the other party to the call, for **a short period of time**” (emphasis added). Clearly, retaining the call connection for a short period of time upon a call drop is not the same as “determining, at minimum fixed time intervals determined by a service check timer, the status of the previously established data connection” as recited in claim 12 or “a service check timer for setting a minimum fixed interval after which a previously established data connection is checked to determine if it has been lost” as recited in claim 21.

Thus, Applicants submit that Examiner’s analysis is legally incorrect for the following reasons: (1) Hellander does not teach each and every element of claims 12 and 21; and (2) Hellander does not show an identical invention in as complete detail as is contained in claims 12 and 21.

Withdrawal of the rejections under U.S.C. §102 is respectfully requested.

Claim Rejections under U.S.C. §103(a)

The Examiner rejected claims 2-6, 9, 10, 13-16, 18, and 22-27 as being unpatentable over Hellander in view of U.S. Patent No. 6,625,198 (Tiedemann).

Applicants submit that nothing in Tiedemann teaches or suggests a service check timer for “determining, at minimum fixed time intervals [...] the status of the previously established data connection” as recited in claim 12 or “for setting a minimum fixed interval after which a previously established data connection is checked to determine if it has been lost” as recited in claim 21.

Thus, Applicants respectfully submit that the Examiner has not made a *prima facie* case for rejection under section 103 as the references (Hellander and Tiedemann) fail to disclose or suggest all claim elements.

The Examiner rejected claims 7 and 8 as being obvious in view of Hellander in view of Tiedemann and further in view of U.S. Patent No. 4, 827,507 (Marry); claim 17 as being obvious in view of Hellander and Tiedemann; claim 19 as being obvious in view of Hellander and Tiedemann and further in view of an Official Notice; and claim 20 as being obvious in view of Hellander in view of Tiedemann and further in view of U.S. Publication No. 2002/0082032A1 (Hunzinger).

Each of claims 7, 8, 17, 19, and 20 is dependent, directly or indirectly, from claim 12, and includes all the features of claim 12. Applicants reiterate the comments made above in respect of Hellander and Tiedemann, and submit that, since neither Hellander nor Tiedemann teach all the features of independent claim 12, they cannot teach or reasonably suggest all the features of a claim dependent from claim 12. Applicants further submit that none of Marry, the Official Notice or Hunzinger teach or suggest a service check timer that determines the minimum fixed time intervals at which an established data connection is checked, as claimed herein.

Furthermore, with respect to claim 19, MPEP 2144.03 provides that use of official notice should be used rarely, and when used, must be “judiciously applied.” Applicants submit Official notice is not intended to be “magic words” that cure a defect in a rejection in general,

or that supply an element missing from the cited references in particular. Applicants request the Examiner to provide evidence showing the matter noticed. See also *In re Lee*, 61 USPQ2d at 1434-35 (agency expertise is not evidence, and cannot serve as a substitute for evidence).

Therefore, Applicants submit that there is no combination of the cited references that can teach or suggest all the claimed limitations in claims 7, 8, 17, 19, or 20, and no showing of *prima facie* obviousness can be made. Withdrawal of the rejections under U.S.C. §103(a) is respectfully requested.

Applicants submit that all the Examiner's rejections have been addressed and respectfully requests early reconsideration of this application.

The Commissioner is hereby authorized to charge any additional fees, and credit any over payments to Deposit Account No. 501593, in the name of Borden Ladner Gervais LLP.

Respectfully submitted,

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